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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

CURT SIMPSON,

Plaintiff,

- vs -

ROCKY MOUNTAIN OIL, LLC, d/b/a
HOLIDAY STATIONSTORE,

Defendants.

CASE No.:

COMPLAINT

Plaintiff, CURT SIMPSON (hereinafter the “Plaintiff”), through undersigned counsel, hereby files this Complaint and sues ROCKY MOUNTAIN OIL, LLC, a Montana Limited Liability Company, d/b/a HOLIDAY STATIONSTORE (hereinafter, the “Defendant”), for injunctive relief, attorney’s fees and costs (including, but not limited to, court costs and expert fees), pursuant to 42 U.S.C. §12181, et. seq., (“AMERICANS WITH DISABILITIES ACT” or “ADA”) and alleges:

JURISDICTION AND PARTIES

1
2 1. This is an action for declaratory and injunctive relief pursuant to Title
3
4 III of the Americans with Disabilities Act, 42 U.S.C. §12181, et. seq., (hereinafter
5 referred to as the “ADA”). This Court is vested with jurisdiction under 28 U.S.C.
6 §1331 and §343.

7
8 2. Venue is proper in this Court, Missoula Division pursuant to 28
9 U.S.C. §1391(B) in that all events giving rise to this lawsuit occurred in Missoula
10 County, Montana.

11
12 3. At the time of Plaintiff’s visit to Defendant’s Subject Facilities, prior
13 to instituting he instant action, CURT SIMPSON (hereinafter referred to as
14 “SIMPSON”), was a resident of the State of Montana, has an amputation of the
15 right leg and as such suffers from what constitutes a “qualified disability” under
16 the Americans with Disabilities Act of 1990, and used a wheelchair for mobility.
17 He is required to traverse with a wheelchair and is substantially limited to
18 performing one or more major life activities including, but not limited to, walking,
19 standing, grabbing, tight grasping, and/or pinching or twisting of the wrist.
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23 4. The Plaintiff personally visited, on or about November 1, 2019
24 Defendant’s Subject Facilities, but was denied full and equal access to, and full and
25 equal enjoyment of, the facilities services, goods, privileges and accommodations
26 offered within Defendant’s Subject Facilities, which is the subject of this lawsuit,
27

1 even though he would be classified as a “bona fide patron”, because of his
2 disabilities. Plaintiff lives in Ravalli County, Montana, in close proximity to
3 Defendant, (within 15.4 miles) and travels in the surrounding areas near
4 Defendant’s Subject Facilities on a regular basis.
5

6 5. The Defendant, ROCKY MOUNTAIN OIL, LLC, a Montana Limited
7 Liability Company, d/b/a HOLIDAY STATIONSTORE is authorized to conduct
8 and are conducting business within the State of Montana.
9

10 6. Upon information and belief, ROCKY MOUNTAIN OIL, LLC a
11 Montana Limited Liability Company, is the lessee/lessor and/or owner/operator of
12 the real property (the “Subject Facility”), and the owner of the improvements
13 where the Subject Facility is located which is the subject of this action, the
14 establishment commonly referred to as HOLIDAY STATIONSTORE located at
15 2325 S. Reserve Street, in Missoula, Montana.
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17

18 7. All events giving rise to this lawsuit occurred in the State of Montana.
19 Venue is proper in this Court as the premises are located in Missoula County in the
20 Montana District, Missoula Division.
21
22

23 **COUNT I – VIOLATIONS OF THE AMERICANS WITH**
24 **DISABILITIES ACT**
25

26 8. On or about July 26, 1990, Congress enacted the Americans with
27 Disabilities Act (“ADA”), 42 U.S.C. §12101, et. seq. Commercial enterprises

1 were provided one and a half years from enactment of the statute to implement its
2 requirements. The effective date of the Title III of the ADA was January 26, 1992.
3
4 42 U.S.C. §12181; 20 C.F.R. §36.508(a).

5 9. Congress found, among other things, that:

- 6
7 or mental
- 8 (i) some 43,000,000 Americans have one or more physical
9 disabilities, and this number shall increase as the
10 population continues to grow older;
 - 11 (ii) historically, society has tended to isolate and segregate
12 individuals with disabilities, and, despite some
13 improvements, such forms of discrimination against
14 disabled individuals continue to be a pervasive social
15 problem, requiring serious attention;
 - 16 (iii) discrimination against disabled individuals persists in
17 such critical areas as employment, housing, public
18 accommodations, transportation, communication,
19 recreation, institutionalization, health services, voting
20 and access to public services and public facilities;
 - 21 (iv) individuals with disabilities continually suffer forms of
22 discrimination, including outright intentional exclusion,
23 the discriminatory effects of architectural, transportation,
24 and communication barriers, failure to make
25 modifications to existing facilities and practices.
26 Exclusionary qualification standards and criteria,
27 segregation, and regulation to lesser services, programs,
benefits, or other opportunities; and,
 - (v) the continuing existence of unfair and unnecessary
discrimination and prejudice denies people with
disabilities the opportunity to compete on an equal basis
and to pursue those opportunities for which our country
is justifiably famous, and costs the United States billions

1 of dollars in unnecessary expenses resulting from
2 dependency and non-productivity.

3 42 U.S.C. §12101(a)(1)-(3), (5) and (9).

4 10. Congress explicitly stated that the purpose of the ADA was to:

- 5
- 6 (i) provide a clear and comprehensive national mandate for
7 the elimination of discrimination against individuals with
8 disabilities;
- 9 (ii) provide clear, strong, consistent, enforceable standards
10 addressing discrimination against individuals with
11 disabilities; and,
- 12 (iii) invoke the sweep of congressional authority, including
13 the power to enforce the fourteenth amendment and to
14 regulate commerce, in order to address the major areas of
15 discrimination faced day-to-day by people with
16 disabilities.

17 42 U.S.C. §12101(b)(1)(2), and (4).

18 11. Pursuant to 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, Defendant is
19 a place of public accommodation in that it is an establishment which provides
20 goods and services to the public.

21 12. Pursuant to 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, the building
22 and/or Subject Facility which is the subject of this action is a public
23 accommodation covered by the ADA and which must be in compliance therewith.

24 13. The Plaintiff is informed and believes, and therefore alleges, that the
25 Subject Facility has begun operations and/or undergone remodeling, repairs and/or
26 alterations since January 26, 1990.
27

1 14. Defendant has discriminated, and continues to discriminate, against
2 the Plaintiff, and others who are similarly situated, by denying full and equal
3 access to, and full and equal enjoyment of, goods, services, facilities, privileges,
4 advantages and/or accommodations at Defendant's Subject Facilities in derogation
5 of 42 U.S.C. §12101, et. seq., and as prohibited by 42 U.S.C. §12182 et. seq., and
6 by failing to remove architectural barriers pursuant to 42 U.S.C.
7 §12182(b)(2)(a)(iv), where such removal is readily achievable.

8
9
10 15. The Plaintiff has been unable to, and continues to be unable to, enjoy
11 full and equal safe access to, and the benefits of, all accommodations and services
12 offered at Defendant's Subject Facilities. Prior to the filing of this lawsuit, the
13 Plaintiff visited the subject properties and was denied full and safe access to all the
14 benefits, accommodations and services of the Defendant. Prior to the filing of this
15 lawsuit, SIMPSON, personally visited HOLIDAY STATIONSTORE located at
16 2325 S Reserve Street, located in Missoula, Montana with the intention of using
17 Defendant's facilities, but was denied full and safe access to the facilities, and
18 therefore suffered an injury in fact that is traceable to the Facilities actions. As
19 stated herein, the Plaintiff has visited the Subject Facilities in the past, prior to the
20 filing of this lawsuit, resides near said Subject Facility, and Plaintiff intends to
21 return to the Subject Facility and Property within six months, or sooner, upon the
22 Subject Facility being made accessible but is currently deterred from returning due
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1 to these barriers. As such, Plaintiff is likely to be subjected to reencountering
 2 continuing discrimination at the Subject Facility unless it is made readily
 3 accessible to and usable by individuals with disabilities to the extent required
 4 under the ADA, including the removal of the architectural barrier which remain at
 5 the Subject Facility. The injury in fact can be redressed by a favorable decision by
 6 this Court.
 7
 8

9 16. Pursuant to the mandates of 42 U.S.C. §12134(a), on July 26, 1991,
 10 the Department of Justice, Office of the Attorney General, promulgated Federal
 11 Regulations to implement the requirements of the ADA, known as the Americans
 12 with Disabilities Act Accessibility Guidelines (hereinafter “ADAAG”), 28 C.F.R.
 13 Part 36, under which said Department may obtain civil penalties of up to \$110,000
 14 for the first violation and \$150,000 for any subsequent violation.
 15
 16

17 17. The Defendant’s Subject Facilities are in violation of 42 U.S.C.
 18 §12182 et. seq., the ADA and 28 C.F.R. §36.302 et. seq., and is discriminating
 19 against the Plaintiff, as a result of interalia, the following specific violations:
 20
 21

22 **VIOLATIONS**

23 a) Failure to provide ADA compliant properly striped and marked parking
 24 stall at the subject property, in violation of 2010 ADAS and 2015 ABAAS
 25 Section 502.3.3. This barrier failed to have compliant properly designated
 26 accessible parking stalls to allow Plaintiff parking which Plaintiff requires
 27 as Plaintiff utilizes a wheelchair due to the Plaintiff’s disability and such
 disabled accessible parking stalls are necessary. Said barrier is covered by
 the A.D.A. guidelines and is in nonconformity with the requirements for
 such architecture.

1 b) Failure to provide ADA compliant parking stall width clearance at the
2 subject property, in violation of 2010 ADAS and 2015 ABAAS Section
3 502.2. This barrier failed to have accessible parking stall to allow Plaintiff
4 accessible parking which Plaintiff requires as Plaintiff utilizes a wheelchair
5 due to the Plaintiff's disability and such disabled accessible parking stalls
6 are necessary. Said barrier is covered by the A.D.A. guidelines and is in
7 nonconformity with the requirements for such architecture.

8 c) Failure to provide ADA compliant properly striped and marked access
9 aisle at an accessible parking stall, in violation of 2010 ADAS and 2015
10 ABAAS Section 502.2. This barrier interfered with the Plaintiff's full and
11 equal enjoyment of the facility by failing to have a compliant access isle
12 connected to parking stall to allow Plaintiff wheelchair access to the facility
13 after exiting his vehicle which Plaintiff requires as Plaintiff utilizes a
14 wheelchair due to the Plaintiff's disability. Said barrier is covered by the
15 A.D.A. guidelines and is in nonconformity with the requirements for such
16 architecture.

17 d) Failure to provide ADA compliant parking stall signage, in violation of
18 2010 ADAS and 2015 ABAAS Section 502.6. This barrier interfered with
19 the Plaintiff's full and equal enjoyment of the facility by failing to have a
20 compliant disabled parking space identification sign properly displayed and
21 mounted. Plaintiff failed to observe proper parking disabled space
22 identification signs for required disabled parking areas at Defendant's
23 establishment and Plaintiff requires disabled wheelchair access parking to
24 the facility as Plaintiff utilizes a wheelchair due to the Plaintiff's disability.
25 Said barrier is covered by the A.D.A. guidelines and is in nonconformity
26 with the requirements for such architecture.

27 e) Failure to provide ADA compliant curb ramp slope gradings, in violation
of 2010 ADAS and 2015 ABAAS Section 403.3. This barrier failed to have
a compliant wheelchair accessible ramp slope grading leading to the
building accessible entrance. Plaintiff utilized a wheelchair due to the
Plaintiff's disability in an attempt to enter Defendant's premises from the
parking lot and encountered this barrier that others without disability did not
encounter. Said barrier is covered by the A.D.A. guidelines and is in
nonconformity with the requirements for such architecture.

1 f) Failure to provide ADA compliant walkway, in violation of 2010 ADAS
2 and 2015 ABAAS Section 303.2 and 303.3. This barrier failed to have a
3 compliant wheelchair walkway that does not contain changes in elevation.
4 Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
5 enter Defendant's premises from the parking lot and encountered a walkway
6 with a noncompliant change in elevation for wheelchair access. Said barrier
is covered by the A.D.A. guidelines and is in nonconformity with the
requirements for such architecture.

7 g) Failure to provide ADA compliant secured floor mats throughout the
8 subject facility, in violation of 2010 ADAS and 2015 ABAAS Section
9 302.2. Plaintiff encountered non-complaint secured floor mats by which he
10 had difficulty negotiating from his wheelchair which was a barrier that non-
11 disabled patrons did not have. Said barrier is covered by the A.D.A.
guidelines and is in nonconformity with the requirements for such
architecture.

12 h) Failure to provide ADA compliant self-serve counter height, at several
13 self-serve counters throughout the subject facility, in violation of 2010
14 ADAS and 2015 ABAAS Section 904.4.1 and 904.4.2. Plaintiff encountered
15 a non-complaint self-serve counter height by which he could not readily
16 exchange machinery items and payment, including point of sale from his
17 wheelchair due to the countertop being of non-compliant height and the
18 inaccessibility to these services that non-disabled patrons could access. Said
barrier is covered by the A.D.A. guidelines and is in nonconformity with the
requirements for such architecture.

19 i) Failure to provide ADA compliant self-serve dispenser height, at several
20 self-serve dispenser areas throughout the subject facility, in violation of
21 2010 ADAS and 2015 ABAAS Section 308.1. This barrier failed to have
22 accessible self-serve dispensers at accessible wheelchair height that did not
23 allow him adequate reach ranges for equal access to self-service items while
24 in his wheelchair that non-disabled patrons could access without barrier.
Said barrier is covered by the A.D.A. guidelines and is in nonconformity
with the requirements for such architecture.

25 j) Failure to provide ADA compliant self-serve counter dispenser height, in
26 violation of 2010 ADAS and 2015 ABAAS Section 904.4.1 and 904.4.2.
27 This barrier failed to have compliant self-serve counter dispenser height
accessible by wheelchair that non-disabled patrons could access without

1 barrier. Said barrier is covered by the A.D.A. guidelines and is in
2 nonconformity with the requirements for such architecture.

3 k) Failure to provide ADA compliant point of sale, merchandise and display
4 reach ranges, throughout the subject facility, in violation of 2010 ADAS and
5 2015 ABAAS Section 308.1. This barrier failed to have point of sale,
6 merchandise and display reach ranges, accessible by wheelchair that non-
7 disabled patrons could access without barrier. Said barrier is covered by the
8 A.D.A. guidelines and is in nonconformity with the requirements for such
9 architecture.

10 l) Failure to provide ADA compliant number of accessible table seating, in
11 violation of 2010 ADAS and 2015 ABAAS Section 226.1. This barrier
12 failed to have a compliant number of wheelchair accessible table seating.
13 Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
14 enter Defendant's premises and encountered inadequate number of
15 accessible table seating with wheelchair access that non-disabled patrons
16 could access without barrier. Said barrier is covered by the A.D.A.
17 guidelines and is in nonconformity with the requirements for such
18 architecture.

19 m) Failure to provide ADA compliant table seating clearances, in violation
20 of 2010 ADAS and 2015 ABAAS Section 902.2. This barrier failed to have
21 a compliant exterior table seating clearances for wheelchair accessible table
22 seating. Plaintiff utilized a wheelchair due to the Plaintiff's disability in an
23 attempt to patronize Defendant's premises and encountered inadequate table
24 seating clearances for wheelchair access that non-disabled patrons could
25 access without barrier. Said barrier is covered by the A.D.A. guidelines and
26 is in nonconformity with the requirements for such architecture.

27 n) Failure to provide ADA compliant table seating clearances, in violation of
2010 ADAS and 2015 ABAAS Section 306.1 and 306.3.1. This barrier
failed to have a compliant table seating clearances for wheelchair accessible
table seating. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
an attempt to patronize Defendant's premises and encountered inadequate
table seating clearances for wheelchair access that non-disabled patrons
could access without barrier. Said barrier is covered by the A.D.A.
guidelines and is in nonconformity with the requirements for such
architecture.

1 o) Failure to provide ADA compliant restroom interior front pull approach
2 clearance, in violation of 2010 ADAS and 2015 ABAAS Section 404.2.4.1.
3 This barrier failed to have restroom interior front pull approach clearance for
4 wheelchair patrons to properly extend and properly reach the door latch to
5 properly lock the restroom door. Plaintiff utilized a wheelchair due to the
6 Plaintiff's disability in an attempt to patronize Defendant's premises and
7 encountered noncompliant restroom interior front pull approach clearance
8 for wheelchair access that non-disabled patrons could access without barrier.
9 Said barrier is covered by the A.D.A. guidelines and is in nonconformity
10 with the requirements for such architecture.

11 p) Failure to provide ADA compliant properly insulated pipes, in violation
12 of 2010 ADAS and 2015 ABAAS Section 606.5. This barrier failed to have
13 compliant properly insulated bathroom pipes accessible by wheelchair.
14 Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
15 enter Defendant's premises and encountered noncompliant properly
16 insulated pipes for wheelchair access that non-disabled patrons could access
17 without barrier. Said barrier is covered by the A.D.A. guidelines and is in
18 nonconformity with the requirements for such architecture.

19 q) Failure to provide ADA compliant mirror height, in violation of 2010
20 ADAS and 2015 ABAAS Section 603.3. This barrier failed to have
21 compliant mirror height accessible by wheelchair. Plaintiff utilized a
22 wheelchair due to the Plaintiff's disability in an attempt to enter Defendant's
23 premises and encountered noncompliant mirror height for wheelchair access
24 that non-disabled patrons could access without barrier. Said barrier is
25 covered by the A.D.A. guidelines and is in nonconformity with the
26 requirements for such architecture.

27 r) Failure to provide ADA compliant soap dispenser reach range, in violation
of 2010 ADAS and 2015 ABAAS Section 308.2.1. This barrier failed to
have compliant soap dispenser reach range accessible by wheelchair.
Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
enter Defendant's premises and encountered noncompliant soap dispenser
reach range for wheelchair access that non-disabled patrons could access
without barrier. Said barrier is covered by the A.D.A. guidelines and is in
nonconformity with the requirements for such architecture.

s) Failure to provide ADA compliant lavatory/toilet clear floor space, in
violation of 2010 ADAS and 2015 ABAAS Section 604.3.2. This barrier

1 failed to compliant lavatory/toilet clear floor space accessible by wheelchair.
2 Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
3 enter Defendant's premises and encountered noncompliant lavatory/toilet
4 clear floor space for wheelchair access that non-disabled patrons could
5 access without barrier. Said barrier is covered by the A.D.A. guidelines and
6 is in nonconformity with the requirements for such architecture.

7 t) Failure to provide ADA compliant rear grab bar length, in violation of
8 2010 ADAS and 2015 ABAAS Section 604.5.2. This barrier failed to have
9 compliant rear grab bar length accessible by wheelchair. Plaintiff utilized a
10 wheelchair due to the Plaintiff's disability in an attempt to enter Defendant's
11 premises and encountered noncompliant rear grab bar length for wheelchair
12 access that non-disabled patrons could access without barrier. Said barrier is
13 covered by the A.D.A. guidelines and is in nonconformity with the
14 requirements for such architecture.

15 u) Failure to provide ADA compliant paper towel dispenser height, in
16 violation of 2010 ADAS and 2015 ABAAS Section 308.2.1. This barrier
17 failed to have compliant paper towel dispenser height accessible by
18 wheelchair. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
19 an attempt to enter Defendant's premises and encountered noncompliant
20 paper towel dispenser height for wheelchair access that non-disabled patrons
21 could access without barrier. Said barrier is covered by the A.D.A.
22 guidelines and is in nonconformity with the requirements for such
23 architecture.

24 v) Failure to provide ADA compliant obstructed paper towel dispenser clear
25 floor space, in violation of 2010 ADAS and 2015 ABAAS Section 305.3.
26 This barrier failed to have compliant unobstructed paper towel dispenser
27 clear floor space accessible by wheelchair. Plaintiff utilized a wheelchair due
to the Plaintiff's disability in an attempt to enter Defendant's premises and
encountered noncompliant obstructed paper towel dispenser clear floor
space for wheelchair access that non-disabled patrons could access without
barrier. Said barrier is covered by the A.D.A. guidelines and is in
nonconformity with the requirements for such architecture.

18. The above-referenced barriers will likely cause a repeated real injury in
fact in a similar way as listed if not remedied when the Plaintiff frequents this

1 property again as described previously. Each of these barriers interfered with the
2 Plaintiff's full and equal enjoyment of the facility by failing to allow Plaintiff the
3 same access due to the Plaintiff's disability as those enjoy without disabilities.
4

5 19. Upon information and belief, there are other current violations of the
6 ADA at Defendant's Properties, and only once a full inspection is done can all said
7 violations be identified due to Plaintiff being deterred from discovering each and
8 every barrier as a result of encountering the above-listed violations.
9

10 20. To date, the readily achievable barriers and other violations of the
11 ADA still exist and have not been remedied or altered in such a way as to
12 effectuate compliance with the provisions of the ADA. The barriers to access at
13 the Subject Facilities, as described above, have severely diminished Plaintiff's
14 ability to avail himself of the goods and services offered at the Subject Facilities,
15 and compromise his safety.
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19 21. Pursuant to the ADA, 42 U.S.C. §12101 et. seq., and 28 C.F.R.
20 §36.304, the Defendant was required to make the Subject Facility, a place of public
21 accommodation, accessible to persons with disabilities since January 28, 1992. To
22 date, the Defendant has failed to comply with this mandate.
23

24 22. The Plaintiff has been obligated to retain the undersigned counsel for
25 the filing and prosecution of this action. The Plaintiff is entitled to have his
26
27

1 reasonable attorney's fees, costs and expenses paid by the Defendant, pursuant to
2 42 U.S.C. §12205.
3

4 23. Pursuant to 42 U.S.C. §12188, this Court is vested with the authority
5 to grant the Plaintiff's injunctive relief; including an order to alter the subject
6 facilities to make them readily accessible to, and useable by, individuals with
7 disabilities to the extent required by the ADA and closing the subject facility until
8 the requisite modifications are completed.
9

10 24. The Plaintiff has standing for injunctive relief as to any other barriers
11 at the Subject Facility related to his disability even if Plaintiff is not deterred from
12 returning to the public accommodation at issue pursuant to *Chapman v. Pier 1*
13 *Imports (U.S.) Inc.*, 631 F.3d 939 (9th Cir. 2011).
14
15

16 WHEREFORE, the Plaintiff hereby demands judgment against the
17 Defendant and the Court declare that the subject property and Subject Facilities
18 owned, operated, leased, controlled and/or administered by the Defendant are
19 violative of the ADA;
20

21 A. The Court enter an Order requiring the Defendant to alter their
22 facilities and amenities to make them accessible to and usable by
23 individuals with disabilities to the full extent required by Title III of
24 the ADA;
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- 1 B. The Court enter an Order directing the Defendant to evaluate and
2 neutralize their policies, practices and procedures toward persons with
3 disabilities, for such reasonable time so as to allow the Defendant to
4 undertake and complete corrective procedures to the Subject Facility;
5
6 C. The Court award reasonable attorney's fees, all costs (including, but
7 not limited to court costs and expert fees) and other expenses of suit,
8 to the Plaintiff; and
9
10 D. The Court award such other and further relief as it deems necessary,
11 just and proper.
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15 Dated: This 26th day of December 2019.
16

17 By: /s/ M. William Judnich
18 M. William Judnich
19 Attorney for Plaintiff
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